

**SUBSTITUTE FOR
SENATE BILL NO. 46**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3115 (MCL 324.3115).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. (1) The department may request the attorney
2 general to commence a civil action for appropriate relief,
3 including a permanent or temporary injunction, for a violation of
4 this part or a provision of a permit, order, rule, or stipulation
5 of the department. An action under this subsection may be
6 brought in the circuit court for the county of Ingham or for the
7 county in which the defendant is located, resides, or is doing
8 business. The court has jurisdiction to restrain the violation
9 and to require compliance. In addition to any other relief
10 granted under this subsection, the court shall impose a civil
11 fine of not less than ~~\$2,500.00 and~~ **\$2,750.00 or more than**

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1 \$27,500.00 per violation for each day the violation occurs or
2 continues. The court may also award reasonable attorney fees and
3 costs to the prevailing party in an action brought under this
4 subsection. ~~However, the maximum fine imposed by the court~~
5 ~~shall be not more than \$25,000.00 per day of violation.~~

6 (2) Upon a finding by a court that a civil defendant caused
7 or contributed to a catastrophic discharge, the court shall
8 impose, in addition to the sanctions set forth in subsection (1),
9 a civil fine of not less than \$50,000.00 per violation for each
10 day the violation occurs or continues.

11 (3) ~~-(2)-~~ A person who at the time of the violation knew or
12 should have known that he or she discharged a substance contrary
13 to this part, or contrary to a permit, order, rule, or
14 stipulation of the department, or who intentionally makes a false
15 statement, representation, or certification in an application for
16 or on a form pertaining to a permit or in a notice or report
17 required by the terms and conditions of an issued permit, or who
18 intentionally renders inaccurate a monitoring device or record
19 required to be maintained by the department, <<or who fails to report a
discharge in a timely manner when the person had a legal obligation to do
so,>>is guilty of a

20 felony and shall be fined not less than ~~-\$2,500.00-~~ \$2,750.00 or
21 more than ~~-\$25,000.00-~~ \$27,500.00 per violation for each day the
22 violation occurs or continues. The court may impose an
23 additional fine of not more than \$25,000.00 for each day during
24 which the unlawful discharge occurred. If the conviction is for
25 a violation committed after a first conviction of the person
26 under this subsection, the court shall impose a fine of not less
27 than \$25,000.00 per day and not more than \$50,000.00 per day of

1 violation. Upon conviction, in addition to a fine, the court in
2 its discretion may sentence the defendant to imprisonment for not
3 more than ~~2~~ 4 years or impose probation upon a person for a
4 violation of this part. With the exception of the issuance of
5 criminal complaints, issuance of warrants, and the holding of an
6 arraignment, the circuit court for the county in which the
7 violation occurred has exclusive jurisdiction. However, ~~the~~ a
8 person ~~shall~~ **is** not ~~be~~ subject to the penalties of this
9 subsection if the discharge of the effluent is in conformance
10 with and obedient to a rule, order, or permit of the department.
11 In addition to a fine, the attorney general may file a civil suit
12 in a court of competent jurisdiction to recover the full value of
13 the injuries done to the natural resources of the state and the
14 costs of surveillance and enforcement by the state resulting from
15 the violation.

16 (4) ~~(3)~~ Upon a finding by the court that the actions of a
17 civil defendant pose or posed a substantial endangerment to the
18 public health, safety, or welfare, the court shall impose, in
19 addition to the ~~penalties~~ **sanctions** set forth in subsection
20 (1), a **civil** fine of not less than \$500,000.00 and not more than
21 \$5,000,000.00.

22 (5) ~~(4)~~ Upon a finding by the court that the actions of a
23 criminal defendant pose or posed a substantial endangerment to
24 the public health, safety, or welfare, the court shall impose, in
25 addition to the penalties set forth in subsection ~~(2)~~ (3), a
26 fine of not less than \$1,000,000.00 and, in addition to a fine, a
27 sentence of ~~5~~ 10 years' imprisonment.

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(6) ~~—(5)—~~ To find a defendant ~~<<civilly or>>~~ criminally liable

for substantial endangerment under ~~<<subsections (3) and (4)~~

~~subsection>>~~ (5), the court shall determine that the defendant knowingly or

recklessly acted in such a manner as to cause a danger of death

or serious bodily injury and that either of the following

occurred:

(a) The defendant had an actual awareness, belief, or

understanding that his or her conduct would cause a substantial

danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of

care that any reasonable person should observe in similar

circumstances.

~~<<(7) To find a defendant civilly liable for substantial endangerment under subsection (4), the court shall determine that the defendant acted in careless disregard of the standard of care that a reasonable person should observe in similar circumstances.>>~~

~~<<(8)>>~~ ~~—(6)—~~ Knowledge possessed by a person other than the

defendant under subsection ~~—(5)—~~ (6) ~~<<or (7)>>~~ may be attributable to the

defendant if the defendant took affirmative steps to shield

himself or herself from the relevant information.

~~<<(9)>>~~ ~~—(7)— Any~~ All of the following apply to any fine or other

award ordered paid pursuant to this section: ~~—shall do both of~~

~~the following.~~

(a) ~~Be~~ The fine or award shall be payable to the state of

Michigan. ~~—and~~

(b) The fine or award shall be credited to the general fund

if the fine or award was recovered in a civil action. However,

up to \$10,000.00 annually of civil fines collected under this

Section shall be available for the payment of awards under

Section 3115b.

(c) ~~—(b)—~~ ~~Constitute~~ The fine or award constitutes a lien on

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1 any property, of any nature or kind, owned by the defendant.

2 <<(10)>> ~~—(8)—~~ A lien under subsection ~~—(7)(b)—~~ <<(9)(c)>> shall
take

3 effect and have priority over all other liens and encumbrances

4 except those filed or recorded prior to the date of judgment, **but**

5 only if notice of the lien **under subsection <<(9)(c)>>** is filed or

6 recorded as required by state or federal law.

7 <<(11)>> ~~—(9)—~~ A lien filed or recorded pursuant to subsection

8 ~~—(8)—~~ <<(10)>> shall be terminated according to the procedures

9 required by state or federal law within 14 days after the fine or

10 other award ordered to be paid is paid.

11 <<(12)>> ~~—(10)—~~ In addition to any other method of collection,

12 any fine or other award ordered paid may be recovered by right of

13 setoff to any debt owed to the defendant by the state of

14 Michigan, including the right to a refund of income taxes paid.

15 <<(13)>> As used in this section, "catastrophic discharge" means

16 any intentional or grossly negligent spilling, leaking, pumping,

17 pouring, emitting, emptying, releasing, injecting, escaping,

18 leaching, dumping, or disposing of a substance to waters of the

19 state that causes a serious impairment to natural resources or to

20 the public health, safety, or welfare or that would have caused a

21 serious impairment to natural resources or to the public health,

22 safety, or welfare but for some extraordinary intervention.

23 Enacting section 1. This amendatory act does not take

24 effect unless Senate Bill No. 568 of the 92nd Legislature is

25 enacted into law.